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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,531	10/23/2000	Thomas T. Yamashita	YAMA-008	3483

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/695,531

Applicant(s)

YAMASHITA, THOMAS

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

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DETAILED ACTION

Declaration

The Declaration of Thomas Yamashita under 37 CFR 1.132 filed 15 April 2002 is insufficient to overcome the rejection of claims 1-20 based upon 25 USC sections 102 and 103 as set forth in the last Office action because:

First, the C.V. of Thomas Yamashita referred to in the Declaration on page 1 was not found in the application after a thorough search. Therefore, the qualification of Mr. Yamashita to speak as one of ordinary skill in the art is unsubstantiated.

Second, even if the C.V. were evidenced in the Declaration, the Declaration would be found unpersuasive because the Declaration is not drawn to all the species of bacteria and fungi cited to in the office action. The office action references the list of bacterial and fungal species found at page 5, middle para., of Reinbergen. These species include those of *Bacillus* for bacteria and *Trichoderma* for fungi.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10-13, 14, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinbergen (WO 97/31879).

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As to Claim 1, Reinbergen discloses a composition comprising a plurality of distinct microbial species (see abstract) wherein each constituent member is antagonistic against microbe pathogens, non-pathogenic toward plant and animals, tolerant of high temperatures, grows rapidly; and proliferates on a complex substrate (page 5 middle para).

As to Claim 2, Reinbergen further discloses one bacterial and one fungal species (page 5 middle para.).

As to Claims 3 and 4, Reinbergen further discloses at least 5 distinct microbial species or 5 distinct bacteria species (page 5 middle para., page 9 lines 19-30).

As to Claim 5, Reinbergen further discloses 2 distinct fungal species (page 5 middle para.).

As to Claims 6-8, Reinbergen further discloses a liquid or solid carrier (page 5 lines 19-29).

As to Claim 10, Reinbergen discloses a composition comprising a plurality of at least 5 distinct bacterial species and at least 2 distinct fungal species (page 5 middle para.) wherein each constituent member is antagonistic against microbe pathogens, non-pathogenic toward plant and animals, tolerant of high temperatures, grows rapidly; and proliferates on a complex substrate (page 5 middle para).

As to Claims 11 and 12, Reinbergen further discloses a liquid or solid carrier (page 5 lines 19-29).

As to Claim 13, Reinbergen further discloses applying the composition of Claim 1 to the soil (abstract and page 11 example 1).

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As to Claim 14, Reinbergen discloses a method of producing a composition of Claim 1, comprising identifying a plurality of microbial species that are antagonistic against microbe pathogens, non-pathogenic toward plant and animals, tolerant of high temperatures, grows rapidly; and proliferates on a complex substrate (page 5 middle para); and combining the plurality (page 5 lines 19-21).

As to Claims 17-19, Reinbergen further discloses a liquid or solid carrier (page 5 lines 19-29).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinbergen (WO 97/31879).

As to Claim 15, the limitations of Claim 14 are disclosed above. Not disclosed is growing the species separately before combining. Examiner takes official notice that it old and notoriously well known in the microbiological art to grow microbial species separately. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Reinbergen by growing the species separately so as to maintain pure species lines to ensure quality of the final product.

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As to Claim 20, the limitations of Claim 14 are disclosed as described above. Not disclosed are the species assayed to determine their (i)-(v) characteristics. Examiner takes official notice that it is old and notoriously well known in the microbiological art to grow and determine traits of a microbial species before adding it to a composition. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Reinbergen by assaying the species to determine their (i)-(v) characteristics so as to ensure the composition works.

Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinbergen (WO 97/31879) in view of Kosanke et al. (US 5,695,41).

As to Claim 9, the limitations of Claim 1 are disclosed as described above. Not disclosed are the microbial species grown on a complex substrate. Kosanke et al. discloses growing microbes on complex substrates (col. 4 lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the composition of Reinbergen by using a complex substrate to grow the microbes as disclosed by Kosanke et al. so as to efficiently grow the organisms.

As to Claim 16, the limitations of Claim 15 are disclosed as described above. Not disclosed are the microbial species grown on a complex substrate. Kosanke et al. discloses growing microbes on complex substrates (col. 4 lines 25-34). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the method of Reinbergen as modified by using a complex substrate to grow the microbes as disclosed by Kosanke et al. so as to efficiently grow the organisms.

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Response to Arguments

Applicant's arguments filed 15 April 2002 have been fully considered but they are not persuasive. The crux of Applicant's argument is that the bacterial species cited in Reinbergen do not possess all of the limitations of Claim 1 (Applicant's Remarks page 2, 3rd complete para.). For example, *S. cerevisiae* lack tolerance to high temperatures (Applicant's Remarks page 2, last para.) and *E. herbicola* causes damage to plants (Applicant's Remarks page 3, middle para.). The office action, however, cites to the bacteria and fungi listed on page 5 of Reinbergen, namely, *Bacillus* spp. and *Trichoderma* spp. Examiner considers these species to possess the limitations cited in Applicant's claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

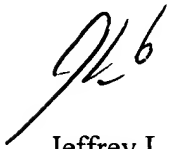
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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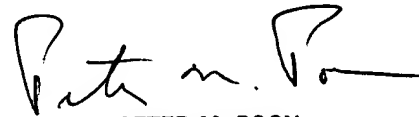
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



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